



FR-4915-01-P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36225]

Fortress Investment Group LLC—Continuance in Control Exemption—Central Maine & Quebec Railway US Inc., Ohio River Partners Shareholder LLC, and DesertXpress Enterprises, LLC

Fortress Investment Group LLC (Fortress) has filed a verified notice of exemption pursuant to 49 CFR 1180.2(d)(2) for the benefit of Brightline Holdings LLC (Brightline) and Fortress Transportation and Infrastructure Investors LLC, which are managed by affiliates of Fortress, to continue in control of DesertXpress Enterprises, LLC (DXE)¹ following the acquisition of DXE by Brightline.

According to Fortress, on September 17, 2018, Brightline, DXE, and Benny's HoldCo, LLC, entered into a Membership Interest Purchase Agreement (Purchase Agreement)² pursuant to which Brightline will acquire 100% of the member interests of DXE. Upon consummation of the transaction contemplated by the Purchase Agreement, Brightline, a noncarrier, will control DXE. Brightline currently controls Brightline Trains LLC (Brightline Trains) which operates express passenger rail service between

¹ In DesertXpress Enterprises—Construction & Operation Exemption—in Victorville, Cal. & Las Vegas, Nev. (DesertXpress), FD 35544 (STB served Oct. 25, 2011), the Board authorized DXE to construct and operate a high-speed passenger rail line between Victorville, Cal., and Las Vegas, Nev. (DXE Line). Fortress states that DXE has been engaged in development and planning for the DXE Line, including obtaining certain federal and state permits, acquiring rights-of-way, and pursuing financing for the project.

² Fortress submitted a redacted copy of the Purchase Agreement with its verified notice of exemption. It also submitted an unredacted copy under seal along with a motion for protective order pursuant to 49 CFR 1104.14(b). That motion will be addressed in a separate decision.

Miami, Fla., and West Palm Beach, Fla.³ Fortress asserts that Brightline can assist DXE in bringing its planned high-speed passenger rail system between Las Vegas and Victorville to fruition.

The parties intend to consummate the proposed control transaction as soon as practicable after the exemption becomes effective (30 days after the verified notice was filed) and the satisfaction of all other conditions precedent to closing set forth in the Purchase Agreement.

Fortress states that two other rail carriers subject to the Board's jurisdiction, Central Maine & Quebec Railway US Inc. (CMQR) and Ohio River Partners Shareholder LLC (ORPS), are currently managed by affiliates of Fortress. CMQR, a Class III carrier, operates approximately 244 miles of rail lines in the States of Maine and Vermont. ORPS, a Class III carrier, operates a 12.2-mile rail line between milepost 60.5 at or near Powhatan Point, Ohio, and milepost 72.2 at or near Hannibal, Ohio.

Fortress represents that: (1) none of the rail lines of CMQR, ORPS, or DXE connect with the lines of any other United States railroad that is owned or controlled by Fortress; (2) the transaction is not part of a series of anticipated transactions that would connect the DXE Line with the lines of any other rail carrier owned or controlled by Fortress, any affiliate of Fortress, or any investment fund or entity managed by an affiliate of Fortress; and (3) CMQR, ORPS, and DXE are not Class I carriers.⁴

³ Brightline Trains formerly was known as All Aboard Florida-Operations LLC. Citing All Aboard Florida-Operations LLC—Construction & Operation Exemption—in Miami, Fla., & Orlando, Fla., FD 35680 (STB served Dec. 21, 2012), Fortress states that Brightline Trains is not a rail carrier subject to the Board's jurisdiction.

⁴ Fortress states that CMQR and ORPS are Class III carriers. In DesertXpress, slip op. at 2, the Board noted that DXE anticipated that its operating revenues would qualify it as a Class I carrier; presently, however, according to Fortress, DXE has not

Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. See 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here because all the carriers involved are Class III carriers.⁵

If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than October 18, 2018 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 36225, must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, one copy of each pleading must be served on Terence M. Hynes, Sidley Austin LLP, 1501 K Street, N.W., Washington, DC 20005.

According to Fortress, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic reporting under 49 CFR 1105.8(b).

Board decisions and notices are available on our website at www.stb.gov.

Decided: October 5, 2018.

commenced operations and does not have any operating employees or revenues. See Notice 6.

⁵ See n. 4, above.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Jeffrey Herzig

Clearance Clerk

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